

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CLYDE DAVID CARTER,

Plaintiff,

v.

B. COX,

Defendant.

No. 2:20-cv-01322-KJM-DMC-P

ORDER

Plaintiff, a prisoner proceeding pro se, brings this civil rights action under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge as provided by Eastern District of California local rules.

On June 6, 2023, the Magistrate Judge filed findings and recommendations, which were served on the parties and contained notice that the parties may file objections within the time specified therein. No objections have been filed.

Although it appears from the file that plaintiff's copy of the findings and recommendations was returned, plaintiff was properly served. It is the plaintiff's responsibility to keep the court apprised of his current address at all times. Pursuant to Local Rule 182(f), service of documents at the record address of the party is fully effective.

The court presumes that any findings of fact are correct. *See Orand v. United States*, 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge's conclusions of law are reviewed

1 de novo. *See Robbins v. Carey*, 481 F.3d 1143, 1147 (9th Cir. 2007) (“[D]eterminations of law
2 by the magistrate judge are reviewed de novo by both the district court and [the appellate] court
3 . . .”). Having reviewed the file, the court declines to adopt the findings and recommendations
4 for two reasons.

5 First, the magistrate judge stayed this action in August of 2021. Order, ECF No. 20. The
6 magistrate judge explained that, in light of a pending criminal case against the plaintiff for the
7 same incident at issue in this civil case, the matter should be stayed until the completion of the
8 criminal case. *Id.* The magistrate judge ordered the defense to file status reports on the criminal
9 case every 60 days, *see id.*, and the criminal case is apparently ongoing, *see* Status Report
10 (Apr. 13, 2023), ECF No. 34 (noting a discovery hearing is calendared for December 8, 2023, in
11 the criminal case, with no other scheduled events). This matter remains stayed. As a result, in
12 order to proceed with ruling on defendant’s pending motion to dismiss, *see* Mot., ECF No. 31, the
13 court would need to lift the stay. The court **refers** the matter back to the magistrate judge to
14 consider whether the stay should be lifted.

15 Second, the findings and recommendations are based in part on defendant’s representation
16 that he does not know plaintiff’s current mailing address and that plaintiff has not filed a notice of
17 change of address. *See* Findings and Recommendations at 2, ECF No. 35; Mot. at 2 (“Counsel
18 for Officer Cox is unaware of Carter’s current mailing address.”). But there is an ongoing
19 criminal case against plaintiff, which defendant has monitored closely. There are no allegations
20 about plaintiff’s appearance in that case, whether plaintiff is detained or released pending trial,
21 and whether the Lassen County Superior Court has plaintiff’s present address. In light of the
22 seriousness of the sanction of dismissal, and these outstanding factual issues, the court **refers** the
23 matter back to the magistrate judge to consider whether dismissal is appropriate.

24 Accordingly, IT IS HEREBY ORDERED that:

25 1. The findings and recommendations filed June 6, 2023, are NOT adopted;

26 and

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1 2. This matter is referred to the magistrate judge to consider whether the stay
2 should be lifted, whether dismissal is appropriate, and for all further pretrial proceedings
3 consistent with this order.

4 DATED: August 18, 2023.

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8 CHIEF UNITED STATES DISTRICT JUDGE
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